

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIM. CASE NO. 13-20764

PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

D-2 ANTONIO JOHNSON,

Defendant.

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ORDER DENYING MOTION FOR PRETRIAL DISCLOSURE OF  
F.R.E. 404(b) EVIDENCE (Dkt. 195)

The Third Superseding Indictment contained in Count I a RICO Conspiracy charge pursuant to Title 18 U.S.C. §1962(d). Certain succeeding counts reallege and incorporate paragraphs 1 through 9, and 13 through 16 of Count One in describing the enterprise and as defined in 18 U.S.C. §1959 which criminalizes Violent Crime in Aid of Racketeering, and which states in §1959(b)(2):

(b) As used in this section

- (1) “racketeering activity” has the meaning set forth in section 1961 of this title; and
- (2) “enterprise” includes any partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, which is engaged in, or the activities of which, affect interstate or foreign commerce.

Defendants request pretrial disclosure of the Government’s F.R.E. 404(b) evidence, to thereafter file motions to exclude the evidence and/or adequately prepare to meet the allegations at trial.

The Government response states that “at this time, however, the Government does not anticipate introducing evidence that could be classified as strictly 404(b) evidence.” Gov’t Response Dkt. #222, P.1.

The Government notes, and the Sixth Circuit agrees, *United States v. Toney*, 161 F.3d 404, 413-14 (6<sup>th</sup> Cir. 1998) that “Rule 404(b), however, does not apply to acts that are intrinsic to a continuing pattern of criminal activity. See *United States v. Barnes*, 49 F.3d 1144, 1149 (6<sup>th</sup> Cir. 1995).”

As a District Court recently noted in *United States v. Norwood*, 2014 WL 1870809 (E.D. MI, May 9, 2014):

If these aids are sufficiently connected to the purported RICO Conspiracy, the case law is clear that Rule 404(b)( inapplicable.

Such is the scenario in the RICO conspiracy case.

Accordingly, Defendant’s Motion for Pretrial Disclosure of 404(b) Evidence is DENIED.  
SO ORDERED.

s/Paul D. Borman  
PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: July 1, 2014

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 1, 2014.

s/Deborah Tofil  
Case Manager